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APPLICATIONS GRANTED FOR THE TRANSFER OF CONTROL OF THE LICENSEES OF TELEGUAM HOLDINGS, LLC TO AP TELEGUAM HOLDINGS, INC.

WC Docket No. 10-260

On December 16 and 17, 2010, GTA Telecom, LLC (GTA Telecom), GTA Services, LLC (GTA Services), and Pulse Mobile, LLC (Pulse Mobile) (together, TeleGuam Licensees), Shamrock TeleGuam Holdings, LLC (Shamrock), and AP TeleGuam Holdings, Inc. (AP TG and together with Shamrock, the Applicants) filed a series of applications pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (Act), 47 U.S.C. §§ 214, 310(d), seeking approval for the transfer of control of the TeleGuam Licensees to AP TG.¹ GTA Telecom is the incumbent local exchange carrier (LEC) on Guam. GTA Services offers long distance and international services on Guam, and Pulse Mobile offers wireless services on Guam. As a result of the proposed transaction, AP TG will become the parent company of TeleGuam Holdings, LLC (TeleGuam Holdings), which wholly owns the TeleGuam Licensees.

On January 10, 2011, the Wireline Competition Bureau released a Public Notice requesting comment on these applications.² On February 10, 2011, the Department of Justice, including the Federal Bureau of Investigation, with the concurrence of the Department of Homeland Security (collectively, the Executive Branch Agencies), filed a letter requesting that the Commission defer action on the applications while they reviewed potential national security, law enforcement, and public safety issues.³ We deferred action on the application in response to the Executive Branch Agencies' request. On May 31, 2011, the Executive Branch Agencies submitted a Petition to Adopt Conditions to Authorizations and

¹ *Joint Application of Shamrock TeleGuam Holdings, LLC, Transferor, GTA Telecom, LLC, GTA Services, LLC, Pulse Mobile, LLC, Licensees, and AP TeleGuam Holdings, Inc., Transferee, for Grant of Authority Pursuant to Section 214 of the Communications Act of 1934, as amended, and Sections 63.04 and 63.24 of the Commission's Rules to Complete a Transfer of Indirect Majority Ownership of the Licensees to AP TeleGuam Holdings, Inc.,* WC Docket No. 10-260 (filed Dec. 17, 2010), IBFS File Nos., ITC-T/C-20101216-00486 and ITC-T/C-20101216-00478 (filed Dec. 16, 2010); *Application of Shamrock TeleGuam Holdings, LLC, Transferor, GTA Telecom, LLC, GTA Services, LLC, Pulse Mobile, LLC, Licensees, and AP TeleGuam Holdings, Inc., Transferee, Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act, as amended,* IBFS File No. ISP-PDR-20101216-00021 (filed Dec. 16, 2010); ULS File No. 0004531711 (filed Dec. 16, 2010).

² *Applications Filed for the Transfer of Control of the Licensees of TeleGuam Holdings, LLC to TeleGuam Holdings, Inc.,* Public Notice, DA 11-40 (WCB Jan. 10, 2011).

³ Letter from Siobhan E. Dupuy, U.S. Department of Justice, to Marlene H. Dortch, FCC, WC Docket No. 10-260 (filed Feb. 10, 2011).

Licenses (Petition).⁴ In the Petition, the Executive Branch Agencies advise the Commission that they have no objection to the Commission granting its consent in this proceeding, provided the Commission conditions the grant on the assurances of AP TG, GTA Telecom, GTA Services, and Pulse Mobile to abide by the commitments and undertakings set forth in the May 27, 2011 National Security Agreement (Agreement) entered into by these parties.⁵ The Executive Branch Agencies filed the Petition and Agreement in WC Docket No. 10-260 on May 31, 2011.⁶

We received two comments from competitive telecommunications entities on Guam raising issues associated with the financial qualifications of AP TG to undertake the proposed transaction.⁷ PTI Pacifica Inc. d/b/a IT&E (IT&E) and Pacific Data Systems (PDS) state that the Commission should ensure that AP TG will not be over-leveraged in the amount of debt it assumes to complete the transaction.⁸ They express concern that AP TG is owned by the Advantage Partners private equity group, which defaulted in 2011 on a loan related to a Japanese bank, Tokyo Star Bank Ltd., and assert that any financial difficulty by AP TG could impact incumbent LEC service.⁹ PDS states that the Guam PUC approved the proposed transaction after only a very brief review in November 2010, and although it provided an opportunity for parties to comment on that approval, AP TG's financial qualifications should be scrutinized.¹⁰ PDS also raises a pre-existing dispute it has had with GTA Telecom over interconnection rates and argues that the Commission should not allow GTA Telecom to charge such rates going forward.¹¹

Applicants reply that the Guam PUC granted requests for rehearing on the proposed transaction and conducted a full hearing in which IT&E and PDS participated. They state that the PUC reviewed extensive information relevant to the financial qualifications of AP TG and determined that AP TG has

⁴ Petition to Adopt Conditions to Authorizations and Licenses, WC Docket No. 10-260 and File Nos. ISP-PDR-20101216-00021, ITC-T/C-20101216-00478, ITC-T/C-20101216-00486; ULS File No. 0004531711 (filed May 31, 2011).

⁵ *Id.* at 1-2.

⁶ *Id.* at 2 and Attach., Security Agreement.

⁷ Comments of PTI Pacifica Inc. d/b/a IT&E (filed Feb. 9, 2011); Comments of Pacific Data Systems (filed Feb. 9, 2011).

⁸ IT&E Comments at 1-2.

⁹ *Id.* at 2. IT&E and PDS also assert that the post-transaction ownership chart Applicants submitted to the Guam Public Utilities Commission (PUC) in connection with the proposed transaction did not disclose that AP TG would be owned by three funds affiliated with Advantage Partners. *Id.* at 3; PDS Comments at 2. Applicants stated that they complied with the Guam PUC requirements for ownership disclosure and that they have since provided the PUC with the same post-transaction corporate structure filed with the Commission. Joint Reply Comments of Shamrock TeleGuam Holdings, LLC, GTA Telecom, LLC, GTA Services, LLC, Pulse Mobile, LLC, and AP TeleGuam Holdings, Inc., WC Docket No. 10-260 at 5-6 (filed Feb. 24, 2011) (Joint Reply). *See infra* for a full description of AP TG's ownership structure.

¹⁰ PDS Comments at 2-3.

¹¹ *Id.* at 4.

“sufficient financial resources to fund the sale transaction and to assist GTA in continuing to provide telecommunications services in Guam under the existing Certificates of Authority.”¹² Applicants further assert that the investments made by the Advantage Partners Funds, including Advantage Partners, LLP as the ultimate parent company of AP TG, are executed and managed separately on an investment-by-investment basis. They state that the transaction involving Advantage Partners, LLP and Tokyo Star Bank Ltd. does not have any impact on the sale of GTA Telecom and that Applicants have no liability or risk associated with that loan.¹³ They point out that the Guam PUC made a consistent finding on this issue.¹⁴ Finally, they argue that the interconnection dispute PDS raised is not relevant to the proposed transaction.¹⁵

After careful consideration of the record in this proceeding, we conclude that the concerns raised by IT&E and PDS are not sufficient to justify denial of the applications or to impose conditions on the terms of the transfer. After its initial review in November 2010, the Guam PUC, which is uniquely situated to understand the Guam telecommunications market, conducted a detailed hearing and review of the financial condition of both the TeleGuam Licensees and AP TG in January and February 2011. The full state commission determined that the TeleGuam Licensees had a “consistent and healthy” increase in year-to-year revenues since 2008 and that they are well positioned to be a strong competitor after the sale to AP TG.¹⁶ It reviewed the financial assets and capital commitments of AP TG, finding that there are significant funds available for investment in the TeleGuam Licensees.¹⁷ It further examined the commitments by the institution providing the funding for the sale. It pointed out that the institution was involved in previous financing of the TeleGuam licensees in 2007, that it is familiar with the companies and their operations on Guam, and that the leverage of the proposed transaction is substantially lower than it was in 2007.¹⁸ The Guam PUC further found, after testimony at the hearing, that the loan default with Tokyo Star Bank Ltd. was not relevant and does not pose a financial risk for GTA Telecom because there is no recourse by the creditors to AP TG or Advantage Partners, LLP.¹⁹

Applicants have also filed supplemental information in this record confirming that the amounts

¹² Joint Reply at 5-7 (citing Joint Application of TeleGuam Holdings, LLC and GTA Telecom, LLC for Approval of the Transfer of Control of TeleGuam Holdings, LLC and GTA Telecom, LLC to AP TeleGuam Holdings, Inc., GTA Docket 10-09, Order Approving Sale/Transfer of Ownership and Control of TeleGuam Holdings, LLC and GTA Telecom, LLC (Subject to Conditions) at 5 (Feb. 21, 2011) (*Guam PUC Order*); Joint Application of TeleGuam Holdings, LLC and GTA Telecom, LLC for Approval of the Transfer of Control of TeleGuam Holdings, LLC and GTA Telecom, LLC to AP TeleGuam Holdings, Inc., GTA Docket 10-09, ALJ Report (Feb. 18, 2011) (*Guam ALJ Report*)).

¹³ Joint Reply at 7-8.

¹⁴ *Id.* at 8.

¹⁵ *Id.* at 2-3.

¹⁶ *Guam PUC Order* at 4-5; *Guam ALJ Report* at 9-11.

¹⁷ *Guam PUC Order* at 5-7; *Guam ALJ Report* at 11-14.

¹⁸ *Guam PUC Order* at 6-7; *Guam ALJ Report* at 13-14.

¹⁹ Joint Reply at 7-8; *Guam PUC Order* at 7-8; *Guam ALJ Report* at 14-15.

that the Advantage Partners Funds committed to provide AP TG for the purpose of funding the purchase price of the transaction remain materially unchanged from the time the initial applications were filed and that financing arrangements remain in place.²⁰ Applicants confirm that, in the aggregate, the Advantage Partners Funds have capital commitments from their investors of approximately \$2 billion for investment in multiple corporations, including the TeleGuam Licensees, and that \$700 million of the commitments remain uninvested and available if required for Guam.²¹ We are persuaded by Applicants that this transaction will essentially replace one financial investor with another, that the day-to-day operations of the Licensees will not be affected with current management remaining in place,²² and that the commenters have not demonstrated that AP TG is financially unable to undertake the transaction. We also find that the transaction is likely to result in certain public interest benefits, including allowing Applicants to offer increased competitive, state-of-the-art services in Guam, including to the thousands of new customers that they say they expect as a result of plans to relocate U.S. military personnel to the island.²³

Finally, we agree with the Applicants that the concerns expressed by PDS about interconnection rates are not specific to this transaction. Applicants remain subject to applicable market opening requirements in section 251 of the Act, 47 U.S.C. § 251, and the Commission generally will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction at issue.²⁴

We find that grant of the application, subject to AP TG, GTA Telecom, GTA Services, and Pulse Mobile abiding by the commitments and undertakings contained in the Petition and Agreement, will serve the public interest, convenience, and necessity. Consistent with Commission precedent, we accord the appropriate level of deference to the Executive Branch Agencies' expertise on national security and law enforcement issues.²⁵

²⁰ Letter from Gil M. Strobel, Counsel for AP TeleGuam Holdings, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-260 (filed Apr. 18, 2011). Applicants confirm that all purchase commitments remain unchanged since the devastating March 2011 earthquake in Japan. *Id.* at 2.

²¹ *Id.* at 2.

²² Application at 5, 15; Joint Reply at 8-9.

²³ Application at 13-15.

²⁴ See, e.g., *Applications of AT&T Inc. and Centennial Communications Corp.*, WT Docket No. 08-246, Memorandum Opinion and Order, 24 FCC Rcd 13915, 13929, 13974-74, paras. 30 and 150 (2009) (citing *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, WT Docket No. 08-95, Memorandum Opinion & Order and Declaratory Ruling, 23 FCC Rcd 17444, 17463 at para. 29 (2008)); *Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, WT Docket No. 08-94, Memorandum Opinion & Order, 23 FCC Rcd 17570, 17582 at para. 22 (2008); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 04-70, Memorandum Opinion & Order, 19 FCC Rcd 21522, 21546 at para. 43 (2004); *Applications Filed By Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, WC Docket No. 09-95, Memorandum Opinion and Order, 25 FCC Rcd 5972, n.121 (2010).

²⁵ The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing a transfer of control or assignment application in which foreign ownership is an issue. See *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and*

Pursuant to Sections 4(i), 214, and 310(d) of the Communications Act of 1934, as amended,²⁶ and Sections 0.291, 0.261, and 0.331 of the Commission's rules,²⁷ the Wireline Competition Bureau, the International Bureau, and the Wireless Telecommunications Bureau, under delegated authority, approve the applications listed herein. The Bureaus find that grant of the applications will serve the public interest, convenience, and necessity.²⁸

SECTION 214 AUTHORIZATIONS

A. International

The applications for consent to the transfer of control of certain international section 214 authorizations from the TeleGuam Licensees to AP TG have been assigned the file numbers listed below.

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20101216-00478	GTA Services, LLC	ITC-214-20041117-00453
ITC-T/C-20101216-00486	Pulse Mobile, LLC	ITC-214-20060202-00082

The International Bureau grants the applications to transfer control of international section 214 authorizations held by GTA Services to provide facilities-based and resold service and of international section 214 authorization held by Pulse Mobile to provide resold service in connection with the proposed transaction.

B. Domestic

The Wireline Competition Bureau grants the application to transfer control of domestic section 214 authority in connection with the proposed transaction.

SECTION 310(d) APPLICATION

The application for consent to the transfer of control of licenses under section 310(d) has been assigned the file number listed below.

<u>File Number</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0004531711	Pulse Mobile, LLC	KNKQ317

International Service in the United States, Report and Order, 12 FCC Rcd 24094, 24170-72, paras. 178-82 (1997); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-21, paras. 61-66 (1997) (*Foreign Participation Order*), Order on Reconsideration, 15 FCC Rcd 18158 (2000). In assessing the public interest, the Commission considers the record and accords the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues. *See Foreign Participation Order*, 12 FCC Rcd at 23919-21, paras. 61-66.

²⁶ 47 U.S.C. §§ 154(i), 214, 310(d).

²⁷ 47 C.F.R. §§ 0.291, 0.261, 0.331.

²⁸ *See* 47 U.S.C. §§ 214(a), 310(d).

The Wireless Telecommunications Bureau grants this application to transfer control of licenses held by Pulse Mobile, LLC.

PETITION FOR DECLARATORY RULING UNDER SECTION 310(b)(4)

Applicants have filed a petition for declaratory ruling pursuant to section 310(b)(4) of the Act, 47 U.S.C. § 310(b)(4), and the Commission's *Foreign Participation Order*,²⁹ asserting that it is in the public interest to permit a greater than 25 percent indirect foreign ownership interest in Pulse Mobile, one of the TeleGuam Licensees. The petition seeks authority for 100 percent indirect foreign ownership of Pulse Mobile, a holder of licenses for common carrier cellular, PCS Broadband, and AWS, 1710-1755/2110-2155 MHz Band services. The Petition for Declaratory Ruling has been assigned File No. ISP-PDR-20101216-00021.

Pulse Mobile, a Delaware limited liability company, is a wholly owned subsidiary of TeleGuam Holdings, a Delaware limited liability company. TeleGuam Holdings is, in turn, a wholly owned subsidiary of Shamrock, also a Delaware limited liability company. Applicants state that, pursuant to the agreement and plan of merger by and among AP TG, AP TeleGuam Merger Sub, LLC (MergerCo) (a direct wholly owned subsidiary of AP TG), TeleGuam Holdings, Shamrock, and STG Representative Holdings, LLC, a Delaware limited liability company (as representative of the members and option holders of TeleGuam Holdings), MergerCo will merge with and into TeleGuam Holdings, with TeleGuam Holdings continuing as the surviving entity. As a result of the transaction, the TeleGuam Licensees will become wholly owned indirect subsidiaries of AP TG. Thus, AP TG will become the parent company of the TeleGuam Licensees, including Pulse Mobile.

AP TG, a Delaware corporation formed for the purposes of acquiring the TeleGuam Licensees, is currently a wholly-owned subsidiary of Advantage Partners IV, ILP.³⁰ At the time of the proposed closing, AP TG will be jointly owned by three private investment funds that will collectively own approximately 97.2 percent of the company: (1) Advantage Partners IV, ILP (an investment limited partnership, with Japan citizenship; 42.2 percent ownership of AP TG); (2) AP Cayman Partners II, L.P. (a limited partnership with Cayman Islands citizenship; 29.4 percent ownership of AP TG); and (3) Japan Ireland Investment Partners (a general partnership with Irish citizenship; 25.6 percent ownership of AP TG) (collectively, Advantage Partners Funds). The remaining 2.8 percent of AP TG will be owned by a Japanese-based employee sponsored investment partnership. Thus, 100 percent of AP TG will be directly owned by foreign interests.

The general partner of Advantage Partners IV, ILP is AP IV GP Partnership, a Japanese general partnership, which in turn has AP IV GP Co., Ltd, a Japanese corporation, as its general partner. The limited partners of Advantage Partners IV, ILP are of widely dispersed, World Trade Organization ("WTO") citizenship. AP IV GP Co., Ltd is wholly owned by Advantage Partners, LLP, a Japanese

²⁹ See *supra* n.25.

³⁰ Applicants state that the full name of Advantage Partners IV, ILP is Advantage Partners IV, ILP (Only for Qualified Institutional Investors (with Resale Restriction to Non-Qualified Institutional Investors) and for a Small Number of Other Investors). They further explain that an "ILP" is an Investment Limited Partnership, a form of organization authorized under Japanese law and similar to traditional limited liability partnerships formed in the United States. Letter from Gil M. Strobel, Counsel for AP TeleGuam Holdings, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-260 (filed Jan. 20, 2011).

limited liability partnership; its limited partners are of widely dispersed, WTO citizenship. The following individuals own at least 10 percent of Advantage Partners, LLP: Richard L. Folsom (U.S. citizenship, 43.4 percent) and Taisuke Sasanuma (Japan citizenship, 43.4 percent). Two unidentified persons, one of U.S. citizenship and the other of WTO-Member country citizenship, hold the remaining 13.2 percent ownership interest (each holding less than 10 percent) in Advantage Partners, LLP.

Japan Ireland Investment Partners, LTD, a Cayman Islands entity, owns 99 percent of Japan Ireland Investment Partners.³¹ Japan Ireland Investment Partners, LTD is wholly owned by APS Co., Ltd, a Japanese joint stock corporation, that is in turn wholly owned by Advantage Partners, LLP. The general partner of AP Cayman Partners II, L.P. is AP Cayman Partners II General Partner, L.P., a Cayman Islands exempted limited partnership that has Cayman Capital Management II, Inc., and a Cayman Islands exempted company, as its general partner. The sole shareholder of Cayman Capital Management II, Inc. is Douglas R. Stringer, a U.S. citizen.

Pursuant to the rules and policies established in the Commission's *Foreign Participation Order*, we find that grant of the petition seeking approval of the indirect foreign ownership of TeleGuam Licensee Pulse Mobile via AP TG in excess of the 25 percent benchmark in section 310(b)(4) is consistent with the public interest. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by individuals or entities from WTO Member countries in U.S. common carrier and aeronautical fixed and en route radio licensees. Therefore, with respect to indirect foreign investment from WTO Members, the Commission replaced its "effective competitive opportunities" test with a rebuttable presumption that such investment generally raises no competitive concerns.³² Specifically, this ruling allows indirect foreign ownership of Pulse Mobile, through AP TG, of 100 percent, conditioned on prior Commission approval under section 310(b)(4) before indirect equity and/or voting interests held by citizens of non-WTO-member countries (including interest from unknown countries) exceed 25 percent.

We find that grant of the petition, subject to AP TG, GTA Telecom, GTA Services, and Pulse Mobile abiding by the commitments and undertakings contained in the Petition and Agreement, will serve the public interest, convenience, and necessity. Consistent with Commission precedent, we accord the appropriate level of deference to the Executive Branch Agencies' expertise on national security and law enforcement issues.³³

For further information, please contact Jodie May, (202) 418-0913, Competition Policy Division, Wireline Competition Bureau; Carrie-Lee Early, Policy Division, International Bureau, (202) 418-2776; Kathy Harris, Mobility Division, Wireless Telecommunications Bureau, (202) 418-0620.

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³¹ Applicants state that Japan Ireland Investment Partners, L.P., a Cayman Islands partnership, which does not own an equity interest in Japan Ireland Investment Partners, has a debt interest pursuant to which it has certain priority rights vis-à-vis the equity holders.

³² See generally *Foreign Participation Order*, 12 FCC Rcd at 23893-94, para. 2, 23935-55, paras. 97-149.

³³ See *id.*, 12 FCC Rcd at 23920, para. 63.